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RECEIVED
AUG 28 2015
OFFICE OF THE REGIONAL ADMINISTRATOR

August 25, 2015

BY CERTIFIED MAIL

Andrew Forrest, President and Registered Agent
Massachusetts Broken Stone Company
332 Sawyer Hill Road
Berlin, MA 01503
Certified mail # 7014 3490 0000 7429 7797

Re: 60-Day Notice of Violations and Intent to File Suit Regarding Noncompliance
with Federal Clean Water Act's Industrial Stormwater Discharge Requirements:
332 Sawyer Hill Road, Berlin, MA

Dear Mr. Forrest:

This office represents Clean Water Action, a national non-profit citizens' organization working for prevention of pollution in the nation's waters. Clean Water Action has over one million members nationally, more than 50,000 of whom reside in Massachusetts.

Massachusetts Broken Stone Company ("Massachusetts Broken Stone") submitted a Notice of Intent ("NOI") to be covered by EPA's reissued Multi-Sector General for Stormwater Discharges Associated with Industrial Activity ("General Permit") on April 9, 2010.¹

¹ The General Permit was first issued in 1995 and most recently reissued in June 2015 in substantially similar form. See 60 Fed. Reg. 50804 (Sept. 29, 1995); 65 Fed. Reg. 64746 (Oct. 30, 2000); 73 Fed. Reg. 56572 (Sept. 29, 2008), and reissued in 2015 pursuant to 80 Fed. Reg. 34403 (June 4, 2015).

Massachusetts Broken Stone has violated and continues to violate the Permit's terms and conditions. In particular, the company has not complied with the Permit's monitoring and reporting requirements. Since Massachusetts Broken Stone has not been properly monitoring its discharges, it cannot know how its control measures are performing. Accordingly, it is violating the Permit's requirement to minimize pollutant discharges.

We write to give notice that Clean Water Action intends to file a civil action in the United States District Court for the District of Massachusetts under section 505 of the Federal Clean Water Act (the "Act") against Massachusetts Broken Stone. The subject of the action will be Massachusetts Broken Stone's unlawful discharge of stormwater from its mineral mining and dressing facility at 332 Sawyer Hill Road, in Berlin (the "Facility").² According to Massachusetts Broken Stone's Notice of Intent, stormwater runoff from the Facility is discharged into "Hog Swamp." Hog Swamp is connected to Hog Brook, which is connected to the Assabet River.

BACKGROUND

Activities that take place at industrial facilities, such as mineral mining and dressing, are often exposed to the weather. As runoff from rain or snowmelt comes into contact with these materials, it picks up pollutants and transports them to nearby rivers, lakes, or coastal waters and tributaries thereto, including but not limited to storm sewer systems, wetlands, and other surface waters. Stormwater pollution is a significant source of water quality problems for the nation's waters.

Clean Water Action will ask the Court to ensure Massachusetts Broken Stone's future compliance with the Act, assess civil penalties in an appropriate amount,³ award plaintiff its litigation costs, including attorney and expert fees, and award any other relief the Court deems appropriate. Clean Water Action's complaint will be filed a minimum of 60 days after the postmark date of this letter. This is a formal 60-day notice of intent to sue that is being served pursuant to 40 C.F.R., Part 135.

² Massachusetts Broken Stone's April 9, 2010 Notice of Intent states that the company also manufactures asphalt.

³ The Act authorizes the Court to assess a penalty of up to \$37,500 a day for each violation, *see* 33 U.S.C. § 1319(d), 73 Fed. Reg. 75340 (Dec. 11, 2008).

This notice is being provided by:

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MASSACHUSETTS BROKEN STONE'S VIOLATIONS AND DATES OF VIOLATIONS

Massachusetts Broken Stone's violations are described below and are also set forth on a Table attached as Exhibit A hereto.⁴ The Complaint, when filed, will set forth additional days of violations that occur between the date of this letter and the date on which the Complaint is filed.

1. Failure to Comply with the Permit's Monitoring Requirements

Massachusetts Broken Stone is required to monitor its discharges in accordance with the specific provisions of section 6 of the General Permit (pgs. 39-46) and Appendix B, section B. This includes monitoring for benchmark parameters and effluent limitations applicable to mineral mining and dressing facilities and asphalt manufacturing facilities. General Permit, sections 8.D.3 and 8.J.8. Massachusetts Broken Stone was required to monitor for the presence of Total Suspended Solids (TSS) in its stormwater discharges for each quarter commencing with the April 1, 2009 to June 30, 2009 quarter.⁵ Quarterly monitoring is required to continue until

⁴ Clean Water Action believes that violations have occurred on the dates identified in this letter and on Exhibit A, and not just on rain days. However, to the extent it is determined that rain days are relevant in determining the dates of violations, such rain dates through August 19, 2015 are set forth on Exhibit B hereto. The complaint, when filed, will set forth additional rain dates since August 19, 2015.

⁵ If Massachusetts Broken Stone manufactures asphalt emulsion, then it must comply with additional effluent limitations. See General Permit, 8.D.4.

four consecutive quarterly samples show that the company's discharges are below the applicable EPA benchmark levels.⁶ Massachusetts Broken Stone failed to comply with these benchmark monitoring requirements. During the last five years, Massachusetts Broken Stone violated the monitoring requirement by failing to monitor for the following quarters:

July 1, 2010 to September 30, 2010
October 1, 2010 to December 31, 2010
January 1, 2011 to March 31, 2011
April 1, 2011 to June 30, 2011
July 1, 2011 to September 30, 2011
October 1, 2011 to December 31, 2011
January 1, 2012 to March 31, 2012
April 1, 2012 to June 30, 2012
July 1, 2012 to September 30, 2012
October 1, 2012 to December 31, 2012
January 1, 2013 to March 31, 2013
April 1, 2013 to June 30, 2013
July 1, 2013 to September 30, 2013
October 1, 2013 to December 31, 2013
January 1, 2014 to March 31, 2014
April 1, 2014 to June 30, 2014
July 1, 2014 to September 30, 2014
October 1, 2014 to December 31, 2014
January 1, 2015 to March 30, 2015

In addition, to the extent Massachusetts Broken Stone has performed mine dewatering, it did not annually monitor those discharges for compliance with the Permit's pH effluent limitation as required by Section 8.J.9. See General Permit, 6.2.2.

To the extent additional monitoring violations become known to Clean Water Action before the action is filed, the complaint will seek remedy for such additional monitoring

⁶ The benchmark levels for TSS applicable to Massachusetts Broken Stone's discharges is 100 mg/L. See General Permit, sections 8.D.3 and 8.J.8.

violations. To the extent additional monitoring violations are learned through discovery in the action, the complaint will be amended to seek remedy for such additional monitoring violations.⁷

2. Failure to Comply with the Permit's Reporting Requirements

Massachusetts Broken Stone is required to report certain information to EPA and the Massachusetts Department of Environmental Protection ("Mass DEP") regarding its stormwater discharges in accordance with the provisions of Section 7 of the Permit. Among other things, Massachusetts Broken Stone must submit quarterly benchmark monitoring data to EPA. See General Permit, section 7.1.⁸ Benchmark monitoring reports were to have been filed with EPA 30 days following receipt of monitoring results. During the last five years, Massachusetts Broken Stone violated this requirement by failing to submit a quarterly benchmark monitoring report to EPA for the following quarters:

July 1, 2010 to September 30, 2010
October 1, 2010 to December 31, 2010
January 1, 2011 to March 31, 2011
April 1, 2011 to June 30, 2011
July 1, 2011 to September 30, 2011
October 1, 2011 to December 31, 2011
January 1, 2012 to March 31, 2012
April 1, 2012 to June 30, 2012
July 1, 2012 to September 30, 2012
October 1, 2012 to December 31, 2012
January 1, 2013 to March 31, 2013
April 1, 2013 to June 30, 2013
July 1, 2013 to September 30, 2013
October 1, 2013 to December 31, 2013

⁷ Additional discovered monitoring violations may include, without limitation: failure to ensure representative sampling (General Permit, App. B, section B(10)(A), pg. B-4); failure to monitor from all facility outfalls (*id.*, section 6.1.1, pg. 39); failure to monitor during a measurable storm event following the preceding storm by at least 3 days (*id.*, section 6.1.3, pg. 39); failure to conduct monitoring in accordance with test procedures approved under 40 CFR Part 136 (*id.*, App. B, section B(10), pg. B-4); or failure to sample within the first 30 minutes of a measurable storm event (*id.*, section 6.1.4, pg. 39).

⁸ If the data contains any exceedences of benchmarks, it must also be submitted to Mass DEP. See General Permit, Section 9.1.2.4.

January 1, 2014 to March 31, 2014
April 1, 2014 to June 30, 2014
July 1, 2014 to September 30, 2014
October 1, 2014 to December 31, 2014
January 1, 2015 to March 30, 2015

Massachusetts Broken Stone is also required to prepare and submit to EPA annual reports that include findings from its annual comprehensive site inspections and documentation of corrective actions. See General Permit, section 7.2. Massachusetts Broken Stone failed to comply with this requirement, as set forth on Exhibit A.

To the extent additional reporting violations become known to Clean Water Action before the action is filed, the complaint will seek remedy for such additional reporting violations. To the extent additional reporting violations are learned through discovery in the action, the complaint will be amended to seek remedy for such additional reporting violations.⁹

3. Failure to Ensure That Control Measures Minimize Pollutant Discharges

The General Permit requires Massachusetts Broken Stone to ensure that its control measures minimize its stormwater pollutant discharges. General Permit, section 2.0 (pg. 14). Massachusetts Broken Stone must modify its control measures whenever it finds that they “are not achieving their intended effect of minimizing pollutant discharges.” *Id.*, section 2.1. Corrective action must be taken whenever the results of monitoring show that “an exceedence of the 4 quarter average is mathematically certain.” *Id.*, section 4.2 (pg. 27). Documentation of corrective action must be included in the annual report. *Id.*, section 4.4 (pgs. 28-29). Since Massachusetts Broken Stone has failed to properly monitor its stormwater discharges, it cannot have ensured that control measures are minimizing its pollutant discharges.

This Notice Letter alleges that Massachusetts Broken Stone failed to implement adequate control measures and corrective action based on information presently available to Clean Water Action. If additional information regarding this violation becomes known to Clean Water Action in the future, the complaint may set forth some or all of such additional information.

⁹ Additional discovered reporting violations may include, without limitation, failure to submit all reporting data to EPA no later than 30 days after receipt of laboratory results (General Permit, section 7.4).

Massachusetts Broken Stone Company

8/25/2015

Page 7

CONCLUSION

Clean Water Action believes this Notice of Violations and Intent to File Suit sufficiently states the basis for a civil action. During the 60-day notice period, we would be willing to discuss effective remedies for the violations noted in this letter that may avoid the necessity of litigation. If you wish to pursue such discussions, please have your attorney contact us within the next 20 days so that negotiations may be completed before the end of the 60-day notice period. We do not intend to delay the filing of a complaint in federal court if discussions are continuing when that period ends.

Sincerely,



Nora J. Chorover

Attorney for
CLEAN WATER ACTION

cc: (by certified mail)

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EXHIBIT A**MASSACHUSETTS BROKEN STONE'S VIOLATIONS**

Type of Violation	Quarter	Parameters	Beginning Date of Violation	Earliest End Date of Violation
Failure to Monitor for Compliance with Benchmark Limit	Jan-Mar 2015	TSS	March 31, 2015	The present
Failure to Report on Compliance with Benchmark Limit	Jan-Mar 2015	TSS	April 30, 2015	The present
Failure to Monitor for Compliance with Benchmark Limit	Oct-Dec 2014	TSS	December 31, 2014	The present
Failure to Report on Compliance with Benchmark Limit	Oct-Dec 2014	TSS	January 31, 2015	The present
Failure to Monitor for Compliance with Benchmark Limit	Jul-Sep 2014	TSS	September 30, 2014	The present
Failure to Report on Compliance with Benchmark Limit	Jul-Sep 2014	TSS	October 31, 2014	The present
Failure to Monitor for Compliance with Benchmark Limit	Apr-Jun 2014	TSS	June 30, 2014	The present
Failure to Report on Compliance with Benchmark Limit	Apr-Jun 2014	TSS	July 31, 2014	The present
Failure to Monitor for Compliance with Benchmark Limit	Jan-Mar 2014	TSS	March 31, 2014	The present
Failure to Report on Compliance with Benchmark Limit	Jan-Mar 2014	TSS	April 30, 2014	The present
Failure to Monitor for Compliance with Benchmark Limit	Oct-Dec 2013	TSS	December 31, 2013	The present
Failure to Report on Compliance with Benchmark Limit	Oct-Dec 2013	TSS	January 31, 2014	The present
Failure to Monitor for Compliance with Benchmark Limit	Jul-Sep 2013	TSS	September 30, 2013	The present
Failure to Report on Compliance with Benchmark Limit	Jul-Sep 2013	TSS	October 31, 2013	The present
Failure to Monitor for Compliance with Benchmark Limit	Apr-Jun 2013	TSS	June 30, 2013	The present
Failure to Report on Compliance with Benchmark Limit	Apr-Jun 2013	TSS	July 31, 2013	The present
Failure to Monitor for Compliance with Benchmark Limit	Jan-Mar 2013	TSS	March 31, 2013	The present
Failure to Report on Compliance with Benchmark Limit	Jan-Mar 2013	TSS	April 30, 2013	The present
Failure to Monitor for Compliance with Benchmark Limit	Oct-Dec 2012	TSS	December 31, 2012	The present
Failure to Report on Compliance with Benchmark Limit	Oct-Dec 2012	TSS	January 31, 2013	The present
Failure to Monitor for Compliance with Benchmark Limit	Jul-Sep 2012	TSS	September 30, 2012	The present

Type of Violation	Quarter	Parameters	Beginning Date of Violation	Earliest End Date of Violation
Failure to Report on Compliance with Benchmark Limit	Jul-Sep 2012	TSS	October 31, 2012	The present
Failure to Monitor for Compliance with Benchmark Limit	Apr-Jun 2012	TSS	June 30, 2012	The present
Failure to Report on Compliance with Benchmark Limit	Apr-Jun 2012	TSS	July 31, 2012	The present
Failure to Monitor for Compliance with Benchmark Limit	Jan-Mar 2012	TSS	March 31, 2012	The present
Failure to Report on Compliance with Benchmark Limit	Jan-Mar 2012	TSS	April 30, 2012	The present
Failure to Monitor for Compliance with Benchmark Limit	Oct-Dec 2011	TSS	December 31, 2011	The present
Failure to Report on Compliance with Benchmark Limit	Oct-Dec 2011	TSS	January 31, 2012	The present
Failure to Monitor for Compliance with Benchmark Limit	Jul-Sep 2011	TSS	September 30, 2011	The present
Failure to Report on Compliance with Benchmark Limit	Jul-Sep 2011	TSS	October 31, 2011	The present
Failure to Monitor for Compliance with Benchmark Limit	Apr-Jun 2011	TSS	June 30, 2011	The present
Failure to Report on Compliance with Benchmark Limit	Apr-Jun 2011	TSS	July 31, 2011	The present
Failure to Monitor for Compliance with Benchmark Limit	Jan-Mar 2011	TSS	March 31, 2011	The present
Failure to Report on Compliance with Benchmark Limits	Jan-Mar 2011	TSS	April 30, 2011	The present
Failure to Monitor for Compliance with Benchmark Limit	Oct-Dec 2010	TSS	December 31, 2010	The present
Failure to Report on Compliance with Benchmark Limit	Oct-Dec 2010	TSS	January 31, 2011	The present
Failure to Monitor for Compliance with Benchmark Limit	Jul-Sep 2010	TSS	September 30, 2010	The present
Failure to Report on Compliance with Benchmark Limit	Jul-Sep 2010	TSS	October 31, 2010	The present
Failure to Monitor for Compliance with Effluent Limit	2014	pH	September 30, 2014	The present
Failure to Report on Compliance with Effluent Limit	2014	pH	October 31, 2014	The present
Failure to Monitor for Compliance with Effluent Limit	2013	pH	September 30, 2013	The present
Failure to Report on Compliance with Effluent Limit	2013	pH	October 31, 2013	The present
Failure to Monitor for Compliance with Effluent Limit	2012	pH	September 30, 2012	The present
Failure to Report on Compliance with Effluent Limit	2012	pH	October 31, 2012	The present
Failure to Monitor for Compliance with Effluent Limit	2011	pH	September 30, 2012	The present

Type of Violation	Quarter	Parameters	Beginning Date of Violation	Earliest End Date of Violation
Failure to Report on Compliance with Effluent Limit	2011	pH	October 31, 2012	The present
Failure to Submit Annual Report	2014	n/a	November 12, 2014	The present
Failure to Conduct and Document Required Inspections	2014	n/a	September 30, 2014	The present
Failure to Submit Annual Report	2013	n/a	November 12, 2013	The present
Failure to Conduct and Document Required Inspections	2013	n/a	September 30, 2013	The present
Failure to Submit Annual Report	2012	n/a	November 12, 2012	The present
Failure to Conduct and Document Required Inspections	2012	n/a	September 30, 2012	The present
Failure to Submit Annual Report	2011	n/a	November 12, 2011	The present
Failure to Conduct and Document Required Inspections	2011	n/a	September 30, 2011	The present
Failure to Submit Annual Report	2010	n/a	November 12, 2010	The present
Failure to Conduct and Document Required Inspections	2010	n/a	September 30, 2010	The present
Failure to Minimize Pollutants and Implement Adequate Corrective Action	All	All	September 30, 2010	The present

EXHIBIT B

DAYS BETWEEN SEPTEMBER 1, 2010 AND AUGUST 19, 2015 ON WHICH STORMWATER FROM FACILITY DISCHARGED TO WATERS OF THE UNITED STATES

September 2010:	4, 8, 14, 28, 29, 30
October 2010:	2, 4, 6, 7, 15, 17
November 2010:	5, 6, 8, 10, 17
December 2010:	2, 13, 23, 27
January 2011:	12, 13, 19, 20, 27
February 2011:	2, 4, 6, 20, 25, 26, 27
March 2011:	1, 7, 12, 17, 22
April 2011:	1, 5, 13, 14, 17, 20, 21, 24
May 2011:	5, 9, 15, 17, 19, 20
June 2011:	2, 9, 10, 12, 18, 23, 24, 26, 29
July 2011:	9, 15, 23, 26, 30
August 2011:	3, 8, 11, 15, 16, 20, 26, 28, 29
September 2011:	6, 8, 11, 21, 22, 24, 29, 30
October 2011:	1, 4, 5, 13, 14, 17, 20, 27, 28, 31
November 2011:	11, 17, 23, 30
December 2011:	7, 9, 16, 22, 23, 28
January 2012:	12, 13, 17, 22, 24
February 2012:	25
March 2012:	13
April 2012:	2, 23, 24
May 2012:	1, 2, 3, 9, 22, 23
June 2012:	8, 9, 13, 14, 26
July 2012:	3, 24, 29
August 2012:	2, 15, 16, 18, 29
September 2012:	5, 19
October 2012:	16, 20, 30, 31
November 2012:	28
December 2012:	27, 28, 30
January 2013:	
February 2013:	9, 12
March 2013:	
April 2013:	
May 2013:	9, 10, 20, 24
June 2013:	7, 8, 11, 12, 14, 19, 25
July 2013:	11, 23
August 2013:	
September 2013:	3, 11, 13, 23

October 2013:	6, 7
November 2013:	1, 2, 8, 12, 18, 23, 27, 28
December 2013:	2, 8, 10, 15, 18, 24, 30
January 2014:	3, 6, 7, 12, 16
February 2014:	5, 6, 14, 16, 19, 20, 22
March 2014:	13, 20, 30, 31
April 2014:	1, 5, 9, 12, 16, 24, 27
May 2014:	1, 2, 11, 17, 23, 25, 28, 31
June 2014:	4, 6, 14, 18
July 2014:	4, 5, 14, 16, 28, 29
August 2014:	13, 14, 22, 28
September 2014:	1, 7, 21
October 2014:	1, 2, 5, 12, 17, 23, 24
November 2014:	2, 7, 14, 17, 18, 24, 25, 27
December 2014:	3, 6, 7, 10, 11, 17, 23, 24, 25
January 2015:	4, 5, 19, 24, 25, 27
February 2015:	2, 3, 8, 9, 10, 15, 22
March 2015:	2, 4, 15, 27, 29
April 2015:	4, 10, 21
May 2015:	
June 2015:	1, 2, 3, 15, 16, 21, 22, 24, 28, 29
July 2015:	2, 10, 15, 18, 25, 31
August 2015:	2, 5, 12, 16, 19